IPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1968

No. 927

SALVATORE GRANELLO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

IRVING ANOLIK,
Attorney for Petitioner,
225 Broadway,
New York, N. Y. 10007.
(212) 732-1322

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

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PETITION FOR REHEARING

Petitioner prays that this Court grant a rehearing of its order denying the Petition for writ of certiorari herein.

Jurisdiction

By order of March 17, 1969, Mr. Justice Harlan extended the time of Petitioner to file for rehearing until April 15, 1969.

Reasons for Granting the Writ

One of the main issues raised by Petitioner Granello in the Petition for writ of certiorari was the fact that the District Court and the Circuit Court had redacted a significant portion of the transcripts of tapes of certain conversations obtained by trespassory eavesdropping of

premises over which his co-defendant, Levine, had a proprietary interest. The Petitioner was never allowed to see the complete tapes and in fact those were admittedly destroyed by the government. To make matters worse, however, the transcripts that did exist, were never shown in their entirety to Petitioner, but rather only certain portions thereof were submitted to him.

In view of the fact that this Court has now handed down its decision in *Alderman* v. *United States* (decided March 10, 1969), declaring that the determination of prejudice of trespassory tapes must be left to the defendant [Petitioner], and *not* to the trial judge, it is submitted that the determination of the Second Circuit should be vacated and a hearing directed in which the Petitioner will be given the entire tapes so that his own determination may be made in accordance with standards set forth in *Alderman.*

In addition, there was a certain inventory comprising some 300 pages of Birrell records which again the government and the trial judge would not make available to Petitioner saying instead that the Judge alone would determine what may be helpful or relevant to Petitioner.

From prior proceedings herein, this Court knows that Birrell had been a co-conspirator in the first indictment and that he alleged himself that he had represented both Levine and Petitioner, Granello, as attorney during part of the period covered by the indictment. The Courts below did not anticipate the full thrust of *Alderman* [see page 70 of original Petition for Certiorari herein], and there would appear to be every reason to allow a full inspection of the transcripts of the tapes and the inventory since there is no doubt that Granello's name did come into them, albeit the government claims in an immaterial respect.

That is for the defense to determine and not for the Court. The Court below would not even permit an interview of the agents who manned the recording devices to

determine in what context their conclusions were based since in several instances they did not transcribe the conversations, but only a summary thereof.

In view of the new rules promulgated by the Supreme Court in *Alderman* v. *United States,* we submit that a vacating of the judgment of the Court of Appeals is warranted and a remand for a hearing is proper.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that his motion for a rehearing be granted and that this Court issue a writ of certiorari herein to the Court of Appeals for the Second Circuit.

Respectfully submitted,

IRVING ANOLIK
225 Broadway
New York, N. Y. 10007
Counsel for Petitioner

Certificate.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and that it is restricted to grounds specified in Rule 58(2) of the Rules of this Court.

IRVING ANOLIK.